



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ARBIOM, INC.
FOR
FORMER ARBIOM, INC. FACILITY, NORTON, VIRGINIA
EPA ID No. VAR000528000**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Arbiom, Inc., regarding the former Arbiom, Inc. Facility located at 5516 Industrial Park Road, Norton, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Arbiom" means Arbiom, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Arbiom, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means the former Arbiom, Inc. Facility located at 5516 Industrial Park Road in Norton, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "LQG" means large quantity generator, a hazardous waste generator who generates any of the following amounts in a calendar month: (1) greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste; or (2) greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; or (3) greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter. *See* 40 CFR § 260.10.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
14. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.
17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.
18. "VSQG" means very small quantity generator, a hazardous waste generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter. *See* 40 CFR § 260.10.

SECTION C: Findings of Fact and Conclusions of Law

1. Arbiom formerly occupied and operated the Facility in the City of Norton, Virginia. Arbiom operated the Facility as a research center pursuing development and upscaling of technology to convert lingo-cellulosic biomass, particularly wood, into fermentable hydrolysates and high-quality lignin. Operations at the Facility were subject to the VHWMR.
2. On or about February 28, 2020, Arbiom closed the Facility and discontinued operations in Virginia.
3. On January 12, 2021, DEQ issued a Request for Information ("RFI") letter to Arbiom regarding hazardous waste generation activities at the Facility. On April 9, 2021, Arbiom's counsel, Cowan Perry, PC ("Cowan"), provided a written response to the RFI letter on behalf of Arbiom. In addition to other information requested in the RFI, the response included hazardous waste shipping manifests and land disposal restriction forms from the contractor hired by Arbiom to ship and dispose of hazardous wastes from the Facility.
4. On June 4, 2021, DEQ staff conducted a Focused Compliance Inspection ("FCI") of available records regarding the Facility. The FCI was conducted to evaluate Facility compliance with applicable VHWMR.
5. During the June 4, 2021 FCI, DEQ staff observed Uniform Hazardous Waste Manifests indicating Arbiom generated more than LQG threshold amounts of non-acute hazardous waste during the months of January and February 2020. DEQ records indicated the Facility was registered as a VSQG. DEQ has no record of receiving notification from Arbiom for a change in generator status from a VSQG to a LQG. DEQ also has no record of receiving notification from Arbiom of ever ceasing to be a LQG.

6. 40 CFR § 262.13, as referenced by 9 VAC 20-60-262, defines VSQG and LQG.
7. 9 VAC 20-60-315(D) states: “Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record. Any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.”
8. DEQ has no record of receiving notification of the exact location of Arbiom’s 90-day accumulation area(s).
9. 9 VAC 20-60-262(B)(4) states: “For accumulation areas established after March 1, 1988, a large quantity generator shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.17 prior to or immediately upon the establishment of each 90-day accumulation area. In the case of a new large quantity generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity EPA Form 8700-12 that he intends to accumulate hazardous waste in accordance with 40 CFR 262.18. This notification shall specify the exact location of the 90-day accumulation area at the site.”
10. During the June 4, 2021 FCI, DEQ staff observed Uniform Hazardous Waste Manifests indicating Arbiom generated and shipped offsite more than 1,000 kilograms (2,200 lbs) of hazardous waste during the months of January and February 2020. No documentation was observed verifying payment of the LQG annual fee by Arbiom for 2020 for waste generation events of LQG volumes of hazardous waste.
11. 9 VAC 20-60-1283(B) states: “Determination of Annual Fee amount. Each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9VAC20-60-1285 F to be paid in accordance with 9VAC20-60-1284.”
12. 9 VAC 20-60-1284(A) states: “Due date. The operator of the treatment, storage, or disposal facility and each large quantity generator shall pay the correct fees to the Department of Environmental Quality. The department may bill the facility or generator for amounts due or becoming due in the immediate future. All payments are due and shall be received by the department no later than the first day of October 2004 (for the 2003 annual year), and no later than the first day of October of each succeeding year thereafter (for the preceding annual year) unless a later payment date is specified by the department in writing.”
13. 9 VAC 20-60-1285(F), Table 2, states: “Annual Fees. Large quantity generator fees. Large quantity generators. \$1,000.”

14. On April 28, 2022, based on the June 4, 2021 FCI, the Department issued Notice of Violation No. NOV-002-0422-HW to the Arbiom for the violations described in paragraphs C(5), C(8), and C(10), above.
15. On May 6, 2022, DEQ received a written response to the April 28, 2022 NOV from Cowan, on behalf of Arbiom. The response indicated Arbiom's willingness to notify as a LQG and pay the applicable LQG fee for January and February 2020.
16. On May 20, 2022, DEQ compliance staff spoke with Cowan via telephone to discuss necessary actions for returning the Site to compliance. Cowan indicated its intent to submit the required notification identifying Arbiom as a LQG for January and February 2020 and requested an invoice for the LQG annual fee. A follow-up call was held between DEQ enforcement staff and Cowan on June 8, 2022.
17. On June 14, 2022, Cowan submitted a follow-up written response to the April 28, 2022 NOV. Cowan stated that all operations at the Site had been conducted by OptaFuel Tobacco Region, LLC ("OptaFuel"), a subsidiary of Arbiom, which is no longer in operation. Cowan relayed that hazardous wastes removed from the Site during January and February 2020 consisted of raw materials, which could not be returned to the various vendors, and process intermediates which only required disposal as waste due to closure of the Facility. Cowan indicated that Arbiom had contracted with a qualified vendor for disposal of the waste to ensure that all regulated materials were properly handled and disposed of. Cowan also stated that Arbiom did not generate or dispose of any waste after Facility closure on or about February 28, 2020. The response included a draft EPA 8700-12 Form with information identifying OptaFuel as a LQG for January and February 2020. On June 16, 2022, DEQ compliance staff provided comments to Cowan regarding the draft EPA 8700-12 Form.
18. Based on the results of June 4, 2021 FCI, the documentation submitted by Cowan on April 9, 2021, May 6, 2022, and June 14, 2022, and the May 20, 2022 and June 8, 2022 telephone calls between DEQ and Arbiom, the Board concludes that Arbiom has violated 9 VAC 20-60-262(B)(4), 9 VAC 20-60-315(D), 9 VAC 20-60-1283(B), 9 VAC 20-60-1284(A), and 9 VAC 20-60-1285(F), as described in paragraphs C(5), C(8), and C(10), above.
19. In order for Arbiom to return to compliance, DEQ staff and representatives of Arbiom have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Arbiom, Inc., and Arbiom, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,787.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Arbiom, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Arbiom, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Arbiom for good cause shown by Arbiom, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-002-0422-HW, dated April 28, 2022. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Arbiom admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Arbiom consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Arbiom declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a

waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Arbiom to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Arbiom shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Arbiom shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Arbiom shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Arbiom. Nevertheless, Arbiom agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Arbiom has completed all of the requirements of the Order;
- b. Arbiom petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Arbiom.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Arbiom from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.


12. Any plans, reports, schedules or specifications attached hereto or submitted by Arbiom and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Arbiom certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Arbiom to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Arbiom.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Arbiom voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of August, 2022.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Arbion, Inc. voluntarily agrees to the issuance of this Order.

Date: 10/25/2022 By: , SVP
 (Person) (Title)
 Anthony Scime Arbiom, Inc.

State of North Carolina
~~Commonwealth of Virginia~~

City/County of Cary, Wake

The foregoing document was signed and acknowledged before me this 28th day of

June, 2022, by Anthony Scime who is
SVP of Arbiom, Inc., on behalf of the

corporation.

M. K. J.
Notary Public

Nina K Jorale

Registration No.

My commission expires: Sept 15th 2023

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Arbion shall complete the following actions within 14 days of the effective date of this Order:

1. Provide written notification of the change in generator status from VSQG to LQG for the months of January and February 2020, and provide written notification that Arbion ceased being a LQG.

Notification shall be made utilizing the RCRA Subtitle C Site Identification 8700-12 Form and shall be submitted to:

Stacy Bowers
Land Protection & Revitalization Manager
VA DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
(276) 608-8777
stacy.bowers@deq.virginia.gov

2. Submit payment of the LQG fee for the 2020 annual year in the amount of \$1,000.00.

Payment shall be submitted in accordance with 9 VAC 20-60-1284(B), which states:
“Method of Payment. 1. The operator of the facility or the large quantity generator shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and address of the facility or generator, the Federal Identification Number (FIN) for the facility or generator, the amount of the payment enclosed, and the period that the payment covers. With the transmittal letter shall be payment in full for the correct fees due for the annual period. A copy of the transmittal only shall be maintained at the facility or site where the hazardous waste was generated. 2. Fees shall be paid by check, draft or postal money order made payable to “Treasurer of Virginia” and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218. When the department is able to accept electronic payments, payments may be submitted electronically.”